

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**PEGGY J. WILLIAMS**  
Claimant

VS.

**WESLEY MEDICAL CENTER**  
Respondent

AND

**RSKCO INSURANCE COMPANY**  
Insurance Carrier

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Docket No. 270,044

**ORDER**

Respondent and its insurance carrier appealed the April 20, 2005, Award entered by Administrative Law Judge Nelsonna Potts Barnes. The Board heard oral argument on September 7, 2005.

**APPEARANCES**

John C. Nodgaard of Wichita, Kansas, appeared for claimant. William L. Townsley, III, of Wichita, Kansas, appeared for respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The record considered by the Board and the parties' stipulations are listed in the Award.

**ISSUES**

Claimant alleges she injured and/or aggravated her left lower extremity and low back as a result of the work she performed for respondent in May 2001. In the April 20, 2005, Award, Judge Barnes determined claimant injured her left ankle while working for respondent and later developed back symptoms due to that injury. The Judge ultimately

awarded claimant benefits for a 43 percent work disability,<sup>1</sup> which was based upon a 65 percent task loss and a 21 percent wage loss.

Respondent and its insurance carrier contend Judge Barnes erred. They argue claimant did not prove she sustained accidental injury arising out of and in the course of her employment. Respondent and its insurance carrier contend that claimant had avascular necrosis in the navicular bone in her left ankle that caused it to collapse. Accordingly, respondent and its insurance carrier contend claimant's condition is not related to the work she performed for respondent. Therefore, respondent and its insurance carrier request the Board to reverse the April 20, 2005, Award and deny claimant's request for workers compensation benefits.

In the alternative, respondent and its insurance carrier contend claimant's permanent partial general disability should be reduced to either her functional impairment rating or a work disability based upon a 13 percent task loss. Additionally, respondent and its insurance carrier argue the award of permanent partial general disability benefits should be reduced by an amount for the functional impairment that existed before the May 16, 2001, accident.

Conversely, claimant contends she has sustained a 45 percent work disability.

The issues before the Board on this appeal are:

1. Did claimant either injure or permanently aggravate her left ankle while working for respondent?
2. If so, what is the nature and extent of claimant's injury and disability?

#### **FINDINGS OF FACT**

After reviewing the entire record and considering the parties' arguments, the Board finds:

1. While at work on May 16, 2001, claimant experienced pain in her left foot and left ankle. Claimant reported the symptoms to her supervisor. In her May 18, 2001, accident report, claimant described her accident, as follows:

"On or about 5-16 we were working short of staff. I began to have pain in the left ankle, which radiated up my leg to just below my

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<sup>1</sup> A permanent partial general disability greater than the functional impairment rating.

knee. I notice now I can only stand about two hours on my foot and then the same pain comes back. And when I am on my feet all day in the -- oh, my right knee hurts also."<sup>2</sup>

2. Respondent authorized claimant to see Dr. Mark S. Dobyons. The doctor, who saw claimant on May 18, 2001, described claimant's history of her left leg complaints, as follows:

She [claimant] came in stating that for about a month she'd been having pain in the left side of her knee and shin. She was questioned about if she had any trauma and she denied any. She just states she felt it was from being up and doing a lot more walking than usual because they were short-staffed, and she denied any numbness or tingling, just pain in the lateral side of the knee and shin.<sup>3</sup>

3. Dr. Dobyons diagnosed tendinitis and started claimant on a course of treatment, including physical therapy, a knee brace, and medications. Physical therapy notes indicate claimant told the therapist she began feeling pain in her left foot about an hour after turning to her right while working.<sup>4</sup>

[S]he was working in the lab at Carriage Park and demonstrates that she was standing on both legs and turned to her right. About an hour later, she was feeling pain in her left foot.<sup>5</sup>

4. On May 29, 2001, the doctor saw claimant again but this time limited her activities to standing and walking as tolerated. Respondent, however, could not accommodate those restrictions. Accordingly, May 29, 2001, was the last day that claimant worked for respondent. When claimant saw the doctor on June 12 and 29, 2001, she was relatively pain-free while walking on flat surfaces. Accordingly, Dr. Dobyons released claimant to return to regular work activities.
5. But claimant returned to Dr. Dobyons in mid-September 2001 with increasing left lower extremity symptoms. Claimant told the doctor she had been doing a lot of

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<sup>2</sup> R.H. Trans. at 36.

<sup>3</sup> Dobyons Depo. at 6.

<sup>4</sup> *Id.* at 33.

<sup>5</sup> *Id.*, Ex. 3.

walking at school. At that time, claimant was taking college courses that were being held in a local strip mall. Dr. Dobyns referred claimant to an orthopedic specialist.

6. In short, claimant saw several doctors and was diagnosed as having a collapse of the tarsal navicular in the left ankle, which resulted in an abnormal gait and an aggravation of the degenerative changes in claimant's back.
7. Dr. Dobyns does not know what caused the navicular collapse as it could have been caused by injury, a natural degenerative process, or avascular necrosis. On the other hand, claimant's medical expert witness, Dr. Pedro A. Murati, concluded claimant sustained a traumatic injury at work in May 2001, which led to the avascular necrosis and collapse of the navicular. Dr. Philip R. Mills, who was appointed by the Judge to perform an independent medical evaluation, testified it was not possible to determine the cause of the necrosis but the work activities claimant performed for respondent "almost certainly permanently aggravated or accelerated this problem."<sup>6</sup> And respondent's medical expert, Dr. Robert A. Rawcliffe, Jr., testified he could only speculate that over a period of time claimant developed a fatigue fracture in her navicular that led to the aseptic necrosis. Moreover, Dr. Rawcliffe related claimant's work in May 2001 to her ankle problem.

Q. (Mr. Nodgaard) Did I understand your testimony correctly on direct that in any event, whatever happened in May of 2001 was either an injury that occurred to her on that date or it was an aggravation of a pre-existing condition?

A. (Dr. Rawcliffe) Correct.<sup>7</sup>

8. Although the medical experts are not certain why the avascular necrosis began or when it began, the medical experts appear to agree claimant may require an ankle fusion.
9. When the record closed, claimant was working for another employer. The Judge found claimant has sustained a 21 percent wage loss, which the parties do not challenge.

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<sup>6</sup> Mills Depo. at 21-22.

<sup>7</sup> Rawcliffe Depo. at 41.

CONCLUSIONS OF LAW

**1. Did claimant sustain personal injury by accident arising out of and in the course of her employment with respondent?**

The medical evidence establishes that claimant had a tarsal navicular collapse in her left foot, which resulted in an altered gait and low back symptoms. The Board finds it is more probably true than not that claimant injured her left foot and ankle at work on May 16, 2001, that either fractured her navicular and led to avascular necrosis or, at the very minimum, aggravated a preexisting condition in her left ankle. If the May 2001 incident did not fracture claimant's navicular it certainly aggravated claimant's left ankle, which was not the same afterwards. As a natural consequence of the left ankle injury, claimant developed an abnormal gait, which aggravated the preexisting degenerative condition in claimant's low back. Consequently, claimant is entitled to receive workers compensation benefits for both the left ankle and her low back.

**2. What is the nature and extent of claimant's injury and disability?**

The parties introduced three functional impairment ratings. Dr. Murati found claimant sustained a 10 percent whole person functional impairment due to her low back and a 12 percent whole person functional impairment due to her left lower extremity, which combined for a 21 percent whole person functional impairment under the *AMA Guides*<sup>8</sup> (4th ed.). Dr. Mills found a three percent whole person functional impairment for the low back and a 15 percent whole person functional impairment for the left ankle, which combined for an 18 percent whole person functional impairment under the *Guides* (4th ed.). And finally, Dr. Rawcliffe found claimant now has a 26 percent whole person functional impairment and that before her May 2001 accident she had a five percent whole person functional impairment due to her low back.

The Board affirms the Judge's finding that claimant now has a 22 percent whole person functional impairment due to her May 2001 accident. But the Board also finds claimant had a five percent whole person functional impairment before May 2001 that should be deducted in determining claimant's award of permanent partial general disability benefits.<sup>9</sup>

The task analysis exhibit to Dr. Murati's deposition indicated he believed claimant had lost the ability to perform 40 of 59 work tasks she performed in the 15-year period

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<sup>8</sup> American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

<sup>9</sup> See K.S.A. 44-501(c).

before her May 2001 accident, or approximately 68 percent. But excluding the former tasks that are duplicates as they are identically described, Dr. Murati would restrict claimant from performing 30 of 45 tasks, or approximately 67 percent. Excluding the apparent duplicate work tasks, Dr. Mills concluded claimant should not perform 30 of 45 former work tasks, or 67 percent. Accordingly, claimant's task loss percentage for purposes of the permanent partial general disability formula is 67 percent.

The Board notes Dr. Rawcliffe provided a task loss opinion but it is not persuasive as he did not consider claimant's tasks within the context of the job that she had performed as required by *Haywood*.<sup>10</sup> In *Haywood*, the Court stated:

Cessna and Kemper argue that K.S.A. 44-510e(a) requires individual analysis of each job task in light of the physician's restrictions to determine whether the employee is capable of performing that particular task. The statute, however, does not specify that individual analysis of each job task is required. Instead, the statute requires an examination of "the *extent* . . . to which the employee . . . has lost the ability to perform the work tasks . . . ." (Emphasis added.) K.S.A. 44-510e(a). If an employee who is restricted to occasional repetitive use of his hands was required to repetitively use his hands 90% of the time, he clearly has lost the ability to perform those repetitive work tasks. It makes no difference how many repetitive tasks he was required to perform because his job responsibilities required more repetitive use of his hands than was allowed by his work restrictions. As a result, we find that the Board did not err in interpreting K.S.A. 44-510e(a) to allow for aggregation of job tasks in determining Haywood's task loss.<sup>11</sup>

As required by K.S.A. 44-510e, the Board averages claimant's 21 percent wage loss with her 67 percent task loss, which creates a 44 percent permanent partial general disability. After deducting five percent for preexisting functional impairment, claimant is entitled to receive permanent partial general disability benefits for a 39 percent work disability.

### **AWARD**

**WHEREFORE**, the Board modifies the April 20, 2005, Award entered by Judge Barnes.

Peggy J. Williams is granted compensation from Wesley Medical Center and its insurance carrier for a May 16, 2001, accident and resulting disability. Based upon an

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<sup>10</sup> *Haywood v. Cessna Aircraft Co.*, 31 Kan. App. 2d 934, 79 P.3d 179 (2002).

<sup>11</sup> *Id.* at 941-942.

average weekly wage of \$600.63, Ms. Williams is entitled to receive 161.85 weeks of permanent partial general disability benefits at \$400.44 per week, or \$64,811.21, for a 39 percent permanent partial general disability, making a total award of \$64,811.21, which is all due and owing less any amounts previously paid.<sup>12</sup>

The Board adopts the remaining orders set forth in the Award to the extent they are not inconsistent with the above.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October, 2005.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: John C. Nodgaard, Attorney for Claimant  
William L. Townsley, III, Attorney for Respondent and its Insurance Carrier  
Nelsonna Potts Barnes, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>12</sup> Because of the statutory scheme of accelerated payout, claimant is entitled to the same number of weeks of benefits during the different post-injury periods whether that period is based upon claimant's latest average weekly wage and resulting 39 percent work disability or whether it is based upon each respective period's actual average weekly wage and resulting work disability.